THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 8th September, 2006

W.P.Nos.25076 of 2005 and 2306 of 2006

W.P.No.25076/2005

Between:

M/s. Morisetty Venkateswara Rao & Co.,
D.No.11-62-84, Canal Road,
Vijayawada, Krishna District, rep. by its
Partner-Morisetty Ramakrishna Prabhuji … Petitioner

and

The Commissioner and Director of
Marketing of A.P., Hyderabad & others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.25076 of 2005 and 2306 of 2006

COMMON ORDER:

In these two Writ Petitions common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

W.P.No.25076 of 2005

It is the case of the petitioner that it is a licensed commission agent of certain non-resident principals in certain notified agricultural produce, viz., green ginger, onions, garlic etc., which are sold by it on behalf of non-resident principals (consignment sale) situated in other States, in the State of Andhra Pradesh to various dealers. However, contrary to the provisions of the Andhra Pradesh Agricultural (Produce and Livestock) Markets Act,1966 (for short 'the Act') as well as the decisions rendered by the Apex Court and this Court, respondents 3 to 21 have been in the habit of intercepting the vehicles at check posts for the purpose of collection of market fees on agricultural produce being imported from other States, though there is no sale or purchase within the area of the notified Agricultural Market Committee on the goods in transit. Under the provisions of the Act, the levy, charge, collection and demand are strictly confined and limited to the transactions of purchase or sale of notified agricultural produce taking place within the territories of the Andhra Pradesh alone. A purchase effected outside the State cannot be treated as an intra-state purchase. Similarly, despatching the agricultural produce by the non-resident principals to

their agents in the State of Andhra Pradesh shall not be deemed to be an intra-state purchase. Section 12 of the Act is the relevant charging section, which provides for levy of fees by the concerned market committee on notified agricultural produce purchased or sold in the notified market area at a rate prescribed, but not exceeding Re.1/- for every Rs.100/- of the aggregate amount for which the notified produce is purchased or sold. For this purpose, the sale or purchase of the produce shall necessarily occur or take place within the notified area of a particular agricultural market committee and then only such committee would be in a position, under the Act, to levy, demand and collect the market fees. Respondents 3 to 21, under the provisions of the Act, have no power or authority or jurisdiction to levy, demand and collect any market fees from the petitioner in respect of the goods being transported from other States to the place of the petitioner at Vijayawada. Therefore, the collection of market fees from the vehicles at different check posts on different dates is illegal, arbitrary, high handed, without jurisdiction and without any authority of law; more so, *ultra vires* the provisions of the Act in general and Section 12 in particular. Further, the petitioner submitted A.M.C. turnover statement, every year for assessment, to the 2nd respondent showing the details of agricultural market fees payable on sale of agricultural produce in the notified agricultural market committee area. According to the statement for assessment year 2003-04, the total liability of the petitioner under the Act was shown as Rs.4,51,407/- at the rate of Re.1/- for Rs.100/- of the aggregate sale value of the produce of Rs.4,51,40,459/- on which 1% market fees comes to Rs.4,51,407/- and the petitioner, every month, while submitting monthly returns for the assessment year 2003-04 paid an amount of Rs.3,07,209/-. Respondents 3 to 21 collected an amount of Rs.1,44,198/- in the name

of the petitioner, from the vehicles carrying the produce from other States and the said amount is transmitted to the account of the 2nd respondent for giving credit to the petitioner's assessment; thus, the total liability of Rs.4,51,407/- would stand discharged. Respondent No.2 refused the request of the petitioner to consider the amount of Rs.1,44,198/- collected towards agricultural market fees by respondents 3 to 21 at the check posts stating that he has nothing to do with such collection made at the check posts. The action on the part of the 2nd respondent is totally irregular, illegal, improper, arbitrary and contrary to the provisions of the Act, particularly Section 12 thereof read with Rule 74 of the A.P. Agricultural (Produce and Livestock) Market Rules,1969 (for short 'the Rules').

A detailed counter affidavit has been filed by the 2nd respondent denying the allegations made by the petitioner and asserting that he had issued the show cause notice dated 13-10-2005, since the petitioner carried on the trading in the notified produce, viz., garlic, ginger etc., within the notified market area of the 2nd respondent and stood obligated to pay market fees governed by Licence Condition No.6 of the licence. The words 'adjustment or set-of' of market fee collected by other market committees' are alien to the provisions of the Act, inasmuch as on constitution, by issuance of notification under Sections 4(1) and 4(4) of the Act, the 2nd respondent market committee acquired the status of a body corporate. Neither such thing as to adjustment is contemplated under Section 12 of the Act nor under Rules 74 and 75 of the Rules. Respondent No.2 issued notice calling upon the petitioner to produce the books of accounts for the years 2003-04 and 2004-05, but the petitioner failed to produce the books in defiance of Section 17 of the Act; thereby leading to issuance of notice

dated 13-10-2005 to show cause as to why prosecution should not be launched for contravention of Section 7(5) of the Act. The Writ Petition is devoid of merits and is liable to be dismissed.

Respondent No.20 has also filed a counter stating that he has every right to collect market fees at the check posts, since at the time of check, the petitioner failed to produce any such receipts showing that the market fees was paid either for sale or purchase of the agricultural produce, when it was brought within the notified area of the 20th respondent at the relevant check post. Giving letter and spirit of the Act, in the light of Section 12(1) and 12A of the Act and Rules 70 and 74(2) of the Rules, an obligation is cast on the petitioner to pay market fees by submitting the returns. Section 12B of the Act prescribes the procedure for the purpose of assessment. At the time when assessment is made determining the market fees for the assessment year, deductions would be allowed for the market fees already paid and balance amount of market fees would be levied.

Learned counsel for the petitioner strenuously contended that Section 12 of the Act read with Rules 74 and 75 of the Rules would clearly indicate that whenever market fees is paid in another market area and the receipts are produced, the produce is not entitled for being levied with market fees. In support of his contentions, he relied upon the decisions of this Court reported in **HYDERABAD FRUIT COMMISSION AGENTS-MERCHANTS-TRADERS ASSOCIATION v. GOVT.OF A.P.**[1], **AGRICULTURAL MARKET COMMITTEE v. K.S.RAMACHANDRA RAO**[2], and **R.C. OIL & PRODUCT LTD. v. DIRECTOR OF MARKETING, A.P., HYD.**[3].

In **HYDERABAD FRUIT COMMISSION AGENTS-MERCHANTS-TRADERS ASSOCIATION**' case (1 supra), following

the Judgment of the Apex Court in **SRINIVASA GENERAL TRADERS v. STATE OF ANDHRA PRADESH**[4] a Division Bench of this Court held that if the fruits purchased by the purchasers were subjected to market fees and if the purchasers transport the same outside the market area, the same shall not be once again subjected to market fees, provided the purchaser adduces proof of payment of market fee on the fruits purchased. If the market committee had already collected market fees on the sale of fruits and if the fruits had already been subjected to market fees, the amounts so collected by way of market fees shall be refunded to the purchaser.

In **K.S.RAMACHANDRA RAO**'s case (2 supra), a learned Judge of this Court following the decision in **HYDERABAD FRUIT COMMISSION AGENTS-MERCHANTS-TRADERS ASSOCIATION**' case (1 supra) held that Rule 74(1) of the Rules is intended to prevent collection of market fee by different Market Committees on the same transaction. If a person wants to invoke this provision, he has to pay the market fees to the 1st Market Committee, and then, if he takes the produce etc., to another market area for any purpose, he can seek exemption from the 2nd Market Committee. It is not *vice versa.*

In **R.C. OIL & PRODUCT LTD. v. DIRECTOR OF MARKETING** (3 supra) a Division Bench of this Court held that a perusal of sub-rule (2) of Rule 74 of the Rules makes it clear that it incorporates the presumption contained in Explanation I to Section 12 of the Act. It must be noted that neither Explanation I nor sub-rule (2) of Rule 74 extends the presumption to the goods, which are being transported through the Market Area. Inasmuch as the liability to pay market fees arises on sale or purchase of any notified agricultural produce, livestock or products of livestock, the said Explanation and

the said sub-rule raise a presumption, which is rebuttable that when any notified agricultural produce, livestock or products of livestock are taken out of the market area, then such commodities will be presumed to have been purchased or sold within such area. This presumption does not arise in a case where, admittedly, the commodities referred to above are purchased in a different State and are being transported.

Sri K. Madhava Reddy, learned counsel appearing for respondents 2 and 20, strenuously contended that the notified market area of the 2nd respondent is altogether different from the market area of the 20th respondent. May be, in the check post located within market area of the 20th respondent, the market fees was levied on the goods being transported to the market area of the 2nd respondent; but that does not mean that the petitioner is not obligated to pay the market fees as per Section 12 of the Act read with Rule 74 of the Rules. Further, the question of making any adjustments for the market fees already collected elsewhere by another market committee also does not arise. There is no such provision under the law. Each market committee is a body corporate and the payment of market fees at another check post is nothing to do with the levy and collection of market fees in the notified area of the 2nd respondent. Neither there are any instructions issued by the Government nor is there any provision under the law for giving set-off and/or adjustment for the market fees paid to the other notified market. Only under the presumption of the incidence of sale or purchase, the 2nd respondent is entitled to collect the market fees. The question of unjust enrichment by the 2nd respondent does not arise nor it can be called as levying double fees or double point fees. In support of his submissions, he relied upon the judgments of this Court in **MODERN NUTRITION CO.**

v. AGRL.MARKET COMMITTEE[5] and **NARAYANA RAO & SONS v. GOVT.OF A.P.**[6].

In **MODERN NUTRITION CO.** (5 supra), a Full Bench of this Court held as under:

> "**13.** The important expression, to attract action at the check-post in case of transport of any agricultural produce, livestock or products of livestock, is, "purchased or sold in the notified market area". The condition that the agricultural produce, livestock or products of livestock were purchased or sold in the notified market area, do not in any manner change beyond the presumption in Explanation-I of Section 12 of the Act merely because a check-post is contemplated at which production of the receipt for the payment of prescribed fee in respect of notified agricultural produce, livestock or products of livestock to the market committee is contemplated. The expressions, following the above expression 'purchased or sold in the notified market area', in respect of such notified agricultural produce……to the market committee concerned' clearly envisage that fee shall be realizable by the concerned market committee only if the agricultural produce, livestock or products of livestock are purchased or sold in the notified market area……"

In **NARAYANA RAO & SONS** (6 supra) a Division Bench of this Court observed as under:

> "**9**. It is seen that the activity of sale or purchase of 'agricultural produce, livestock or product of livestock' in the market area, attracts the levy of fees. It is, therefore, not necessary for us to examine the definitions of the expressions 'grower' or the 'trader' to determine whether the petitioners fall within the ambit of the definition of those expressions. If the activity attracts the market fee irrespective of whether the petitioners are or are not growers or traders, the same can validly be levied. It is pertinent to note at this stage, explanation (1) to Section 12 of the Act. For the purpose of that section all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall be presumed to have been purchased or sold within such area. It contains a statutory presumption which is of course rebuttable and it is open for any one who asserts to the contra to show that there was no sale or purchase within such area.
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> **10.** In these cases, it is not disputed that cotton seeds were being transported through the market area. Therefore, the Market

> Committee is justified in invoking the presumption that there is sale or purchase of cotton seeds within the notified market area for the purpose of Section 12 of the Act. It is open to the petitioner to rebut that presumption and satisfy the market authorities that cotton seeds were, in fact sold/purchased outside the market area and that on the sale/purchase of the cotton seeds, market fee has already been paid to other Market Committee……."

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the entire material made available on record.

The short question that falls for consideration is whether the market fees paid against certain goods in one notified market area can be adjusted and/or exempted from payment of market fees in another notified market area by the market committee where the agent has filed the returns ?

There is no dispute that the petitioner has paid market fees to the 20th respondent at the check post when insisted upon while the goods were in transit and being brought from outside the State. It is also not in dispute as to the quantity or quantum of levy of fees. Admittedly, the petitioner paid the market fees to the 20th respondent and he submitted returns to the 2nd respondent and sought for adjustment of the same, but the same was refused by the 2nd respondent and issued the show cause notice dated 13-10-2005. In this regard, it may be necessary to notice a few provision of law, viz., Section 12 of the Act and Rules 74 and 75 of the Rules, which read as under:

> "**12. Levy of fees by the market committee** :
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> (1) The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding two rupees, as may be specified in the bye-laws for every hundred rupees of the aggregate amount for which

the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation I:- For the purposes of this section, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presumed to have been purchased or sold within such area.

Explanation II:- ……

(2) The fees referred to in sub-section (1) shall be paid by the purchaser of the notified agricultural produce, livestock or products of livestock :

Provided that where the purchaser cannot be identified, the fees shall be paid by the seller."

Rule 74. **Market Fees**: (1) The fees leviable under sub-section (1) of Section 12 on notified agricultural produce, livestock and products of livestock, if paid to a Market Committee within the State shall not be collected by another Market Committee, subject to production of proof of payment of fees, if already paid once.

(2) The fees payable by a licensed trader shall be paid by submitting such returns as may be prescribed under Rule 70 of these rules.

(3) Any trader claiming exemption from payment of fees shall produce proof of payment in the form of declaration issued by the seller, if the sale and purchase is within the same market area and by production of transport permit issued by the market committee in whose area such notified products of livestock was purchased or processed or resold, as the case may be. The Director of Marketing shall prescribe the forms required for exemption.

(4) The market committee may collect market fees through its licensed Commission agents.

(a) The traders shall pay market fee to the market committee on the notified agricultural produce, livestock or products of livestock not later than 25th of the succeeding month.

(b) Any contravention of this sub-rule shall be punishable with fine which may extend to five thousand rupees.

> Rule 75. **Check-post:-** (1) No person shall transport any notified agricultural produce, livestock, or products of livestock purchased or sold in the notified market area, from the limits thereof, except on production of the receipt for the payment of prescribed fees in respect of such notified agricultural produce, livestock or products of livestock to the market committee concerned.
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> (2) Any employee of the Market Committee authorized by it in this behalf shall have power at any time and without notice to stop and check any vehicle suspected to carry unauthorizedly any notified agricultural produce, livestock or products of livestock from any place within the limits of any notified market area.
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> (3) Any person, who fails to stop the vehicle when required to do so under sub-rule (2), shall be punishable with fine which may extend to Rs.500/-"

Section 12 of the Act is an enabling provision. Rule 74 says that the fee leviable under sub-section (1) of Section 12 on notified agricultural produce, livestock and produce of livestock, if paid to a market committee within the State, shall not be collected by another committee, when such notified agricultural produce, livestock or produce are brought into the notified market area of another market committee, subject to production of such evidence, as may be prescribed in law about the payment of market fees from where it was brought. The above Rule is very clear in its terms. Once a market fees is collected in any of the notified areas of the State on certain agricultural produce, the same goods cannot be subjected for further market fees. Therefore, the contention of the learned Standing Counsel that the enabling provision also contemplates presumptive transactions; as such, once the goods are within the notified market area of the 2nd respondent, it must be presumed that the sale or purchase had effected there and, therefore, the 2nd respondent is entitled to collect market fees and further each market committee is an independent body corporate and the market fees paid elsewhere for

the goods cannot be given exemption in the notified area of the 2nd respondent, is without any substance, in the teeth of the language employed in Rule 74 of the Rules. As noticed above, Rule 74 of the Rules categorically indicates that a fees leviable under sub-section (1) of Section 12 of the Act on notified agricultural produce, fees paid to a market committee within the State shall not be collected by any other market committee, when such notified agricultural produce, livestock etc., are brought into the notified market area of another market committee.

There is no dispute that even the amount collected at a check post located within the notified area of a particular market committee goes to that market committee. Thus, whether it is collected at a check post or in the market area, it makes no difference. Once this is so, the market fees collected at the check post of the 20th respondent cannot be said that such a produce is not exempted or the 2nd respondent is entitled to collect the market fees. Thus, the theory advanced by the learned Standing Counsel for the 2nd respondent that under Sections 4(1) and 4(4) of the Act, each notified market committee is an independent body corporate; therefore, the question of exemption, set off or adjustment does not arise, is only noted to be rejected.

The expression 'market committee' under Section 12(1) of the Act and Rule 74 of the Rules, is inclusive of the transaction made at the check post as contemplated under Rule 75 of the Rules. There is no necessity of discussing all the judgments cited by the learned counsel, except the judgment in **HYDERABAD FRUIT COMMISSION AGENTS** case (1 supra), which is very clear with regard to the question that arises directly for consideration in this case and there cannot be any second opinion. Therefore, once a market fee is paid to

any one of the market committees in the State on notified agricultural produce, the same shall not be collected by another market committee, subject to production of proof of payment of market fees on such produce. There is no dispute, in the present case, that the petitioner had paid market fee to respondents 3 to 21-market committees.

For all the above reasons, the Writ Petition is allowed declaring that the respondents are not entitled to collect any market fees on the same notified agricultural produce for which the petitioner has already paid market fees to respondents 3 to 21 and the petitioner is entitled to claim set-off/adjustment of market fees, which was already paid to respondents 3 to 21. There shall be no order as to costs.

W.P.No.2306 of 2006

For the very same reasons stated in the above Writ Petition No.25076 of 2005, this Writ Petition is also liable to be allowed and is accordingly allowed. No order as to costs.

08-9-2006

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[1] 1996(2) ALT 7 (DB)
[2] 2002(3) ALD 759
[3] 1997(5) ALD 63 (DB)
[4] AIR 1983 SC 1246
[5] 1996(4) ALD 801 (DB)
[6] 1997(3) ALD 458